

Requiring state agencies to consider legislative intent in rulemaking

HB 425 by Christian (West)

DIGEST:	HB 425 would have required a state agency, in developing new rules to implement legislation, to research the legislative intent of the law that authorized the proposed rule, write a legislative history document to be included with notice of the proposed rule, and establish an internal review process for ensuring that the proposed rule was consistent with its legislative history. If the bill author and sponsor were still members of the Legislature, the agency would have had to inform them of its intention to adopt a rule before the agency gave public notice. The bill would have authorized the Legislative Budget Board to issue a letter of legislative intent to clarify the intent behind the general appropriations act or any other legislation related to appropriating funds.
GOVERNOR'S REASON FOR VETO:	<p>“House Bill No. 425 would disregard the constitutional doctrine of separation of powers. Set forth in Article II of the Texas Constitution, this doctrine establishes that there be three distinct departments of our government — legislative, executive, and judicial — and that no department ‘shall exercise any power properly attached to either of the others.’ This bill would allow the Legislative branch to improperly infringe upon the powers and duties of the Executive branch, dictating to the Executive branch how it should exercise its duties.</p> <p>“The bill also would improperly allow the legal opinion of an unelected government staff employee to supersede the expressed will of the Legislature, by giving that unelected staff employee the ability to issue independent opinions on the legislative intent of bills already passed by the Legislature. House Bill No. 425 also would disregard numerous opinions issued by the courts, which have ruled clearly that post-enactment statements of individual legislators should be given little weight in the determination of legislative intent.</p> <p>“Finally, the bill requires executive branch state agencies to determine legislative intent, a function constitutionally left to the courts.”</p>
RESPONSE:	<p>Rep. Wayne Christian, author of HB 425, said: “I was very disappointed in the veto because the bureaucracy of the state has gained more control than the signers of the Constitution ever intended. Legislative intent should be directly followed by agencies.”</p> <p>Sen. Royce West, the Senate sponsor, had no comment on the veto.</p>
NOTES:	HB 425 was analyzed in Part One of the May 2 <i>Daily Floor Report</i> .